

АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС

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THEORETICAL ASPECTS OF THE STATE AND LOCAL SELF–GOVERNMENT AUTHORITIES' RELATIONS

The article investigates the theoretical and practical aspects of the main parameters of state and self-government structures, its interaction in the process of formation and development of the state, its separation from society. The authors make a general description of the state, local government, social sphere. Attention is paid to the issues of relations between local self-government and institutions of the state, society, institutions of human and citizen' rights and freedoms. The objective factors of the relationship between the state and self-government principles are considered, including the degree of socio-economic maturity of society, the ratio and arrangement of social groups. An attempt to determine the role of the individual in the implementation of the harmonization of human and citizen rights and freedoms with the interests of the state and society has been made there.

Keywords: society; civil society; state; local self-government; identity; social sphere; democracy; election; liability.

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Теоретичні аспекти відносин держави та органів місцевого самоврядування

Досліджено теоретичні та практичні аспекти основних параметрів державних і самоврядних структур, їх взаємодію у процесі формування та розвитку держави, її відокремлення від суспільства.

Дано загальну характеристику держави, місцевого самоврядування, соціальної сфери. Розглянуто питання взаємовідносин місцевого самоврядування та інститутів держави, суспільства, інститутів прав і свобод людини та громадянина. Досліджено об'єктивні чинники взаємозв'язку держави та принципів самоврядування, включаючи ступінь соціально-економічної зрілості суспільства, співвідношення і влаштування соціальних груп. Зроблено спробу визначити роль особистості у гармонізації прав і свобод людини та громадянина з інтересами держави і суспільства.

Установлено, що еволюція примітивних форм територіального самоврядування в результаті ускладнення соціальних відносин повинна об'єктивно призвести до утворення держав, в яких власні інститути влади збалансовані державними. Поряд з демократичними теоріями, а іноді і в поєднанні з ними, розроблялися ідеї підпорядкування держави закону; суть цієї ідеї полягала в тому, що людьми повинна керувати не держава, а рівний для всіх закон.

Ключові слова: суспільство; громадянське суспільство; держава; місцеве самоврядування; ідентичність; соціальна сфера; демократія; вибори; відповідальність.

Problem statement. Local government is a multifaceted, multidimensional, multilateral social phenomenon. Modern legal science has a keen interest in the study of the state and various forms of local government. The objects of legal scholars study are the relations that have arisen in the process of organizing and operating self-government in urban, rural and other territories, the peculiarities of these relations, the population as the subject of these relations, the system, principles and functions of local self-government, powers and responsibility. The authors attempt to determine the role of the individual in the implementation of the harmonization of human and citizen's rights and freedoms with the interests of the state and society.

Recent research and publications analysis. States arose, developed and functioned in various socio-economic conditions, hence the wealth and variety of forms and models of administrative institutions in the modern world. Therefore, it is natural that the theoretical foundations of the topic under consideration, first of all, were laid by researchers who studied the state, its forms and institutions, such as: T. Hobbes, J. Locke, Sh. Montesquieu, J. Rousseau, A. Berson, G. Bloomer, A. Aron, M. Weber and others. The works of these scientists, naturally, also touched upon the issues of management and self-government. And their concepts of the origin, organization of the state formed the basis of administrative theories.

The purpose and objective of the article is to analyze the theoretical and practical aspects of the relationship between society, state and local government. The authors attempt to determine the role of the individual in the implementation of the harmonization of human and citizen's rights and freedoms with the interests of the state and society.

Presentation of the main material. The most striking example in this regard is the concept of liberalism created by the English philosopher J. Locke in natural law theory. J. Locke's ideas about the state, which should serve as the guarantor and guardian of natural human rights and freedoms, respectively, formed the basis of self-government concepts. The teachings of Sh. Montesquieu are about achieving political freedom based on the separation of powers. Examples on this topic can be given further.

Despite a detailed and in-depth study of the state and its institutions in the agrarian period of history, the theory of management and self-government does not find generalizations. There is only the accumulation of empirical material and a certain interpretation of it on the basis of philosophical theories. The works of almost all prominent state scholars and jurists of this period are based on an understanding of the state and its role in organization as a universe, a powerful body that ensures order and organization.

This was due to the fact that the state in the agrarian period performed a certain function of an organizer based on violence and oppression of society members.

Due to the fact that the traditions of natural forms of self-government go back centuries, to the primary cells of society represented at different times in different countries, it could not be ignored by scientists. Comprehension of the same public administration as a branch of scientific knowledge occurred somewhat later.

In the nineteenth century, industrial society became a reality and the science of the state is experiencing rapid development. The creation of Constitutions in Western Europe requires a transformation of the system of state power and administration according to new principles; it resolutely rejects the feudal-bureaucratic foundations of absolutism.

The searches of scientists have transformed into theories of local self-government that reflected the experience of civilizations, as well as the ideas of political movements in their support and legal regulation. The main ones are communal, economic, state, legal, and political theories.

The founder of the communal theory, the Frenchman A. Тюрґ, relying on the doctrine of the community and natural law, argued that the community, as an institution that arose before the state, had the right to decide its internal affairs and this phenomenon is natural and inalienable.

Somewhat later, German scholars substantiated the theory of the "free community", which proclaimed the idea of communal self-government autonomy, its self-determination and jurisdiction. Among the followers of this concept are the creators of the Constitution of the Bavarian Kingdom in 1818, the Constitution of Wьrttemberg in 1819, etc. This concept was most consistently and fully embodied

in Belgian legislation. The Belgian Constitution of 1831 recognized municipal power as the fourth power, along with legislative, executive and judicial powers, and fixed this provision with a special article. However, these ideas in social theory arouse criticism, primarily because communal institutions had a corporate, estate character, are intensively eroded by market relations and to some extent restrict the rights of an individual.

The era of market transformations became the basis for the dissemination of economic theory, the essence of which was to recognize that local governments solve only economic problems, excluding political and other problems. But the competence of self-government bodies covers not only economic issues, but also non-economic matters (education, medicine, public order, and fire safety). Naturally, it is completely illegal to limit the content of self-government to economic aspects.

For a long time the social theory of local self-government dominated in legal science. It was based on the theory of natural human rights, developed by T. Jefferson, Al. de Tocqueville, J. Mill, based on the experience of the USA and France.

The local community and the state were opposed in it. The supporters of this theory considered self-government to be a non-state phenomenon, expressing only local interests, whose competence included the organization of local economy. In this part, the theory is merged with the economic one.

It was social theory that became the basis for carrying out reforms in Russia in the second half of the 19th century. (Regulations on Zemsky Institutions in 1864 and City Regulations in 1870). The most prominent representatives of this theory were the researchers V.Leshkov and A.Vasilchikov.

V.Leshkov substantiated the idea of the independence of local self-government bodies from the state as the fourth estate, although he did not deny the possibility of cooperation with government officials. His position was rooted in the differences in the nature of the state and local government. To his opinion, power in the state is a necessary attribute, self-government is a social phenomenon, and the power of its organs is always built on the basis of elections. As a result, he sought equal elections for all segments of the population [1, p. 27].

The main provisions of social theory are presented in the work of A.Vasilchikov "On Self-Government" [2, p. 1–7]. Based on extensive comparative legal material, the study testifies to the author's Slavophil sentiments and his faith in the Russian community. Considering self-government as a special form of self-organization of residents of a certain territory, he tried to combine the public nature of state power and self-government, as a special form of this power. It turned out, as it were, two non-intersecting circles of power, filled with different content.

The ideas of these scientists were most clearly manifested the desire to oppose the omnipotence of the state machine, freedom at the level of local communities and individuals. The idealism of this direction was in underestimating the socio-economic development of Russian society, in the idealization of the Russian philistine, bound by the realities of the remnants of feudalism.

Such an approach opened the way for the development of self-government theory, which quickly became popular.

The founders of the state theory R. Gneist, L. Stein, P. Loband believed that local government bodies remained as the part of a single state mechanism, an element of the general system of social management.

R. Gneisot was the first to introduce the term “self-government” into circulation, which is consonant with the expression “self-government”. “Self-government” - is the local government, transferred by the state to community unions and acting in the field of justice, administration and taxes according to the laws of the state [3, p. 41]. In his opinion, the essence of self-government, as an integral part of public administration, is that it should be carried out by honorary representatives of society or elders on a gratuitous basis. An official performing management functions without remuneration is formally independent of the government.

The vulnerability of this point of view lies in the fact that official activity for the people elected by the people is secondary in relation to the economic one, which gives livelihoods.

In the second half of the 19th century, Lorenz Stein's ideas became dominant among scholars, according to which local self-government bodies enter the system of public administration with special legal powers and rights, combining two main functions – public administration and the interests of local territorial communities ensuring. Accordingly, there are two parallels of legislation. Some norms are established by the state and regulate the functions of state administration, while others are local, that regulate the activities of the community at the local level, adopted by local authorities.

The dualism of L. Stein could be effective only in theory; in practice, the omnipotence of the state simply emasculated the freedom of local collectives, and this was the weakness of his theory.

The spread of statesmen views on local self-government in legal science coincided with the crisis of liberal reforms in Russia in the second half of the 19th century, which attracted a significant number of supporters among Russian scientists to them. They were supported by such famous researchers as: V. Bezobrazov, A. Gradovsky, V. Gessen, N. Korkunov, N. Lazarevsky, A. Elistratov, etc.

The researcher V. Bezobrazov believed that «the more widely the elements of local self-government are developed, the more independent its bodies are, the more its beginnings dominate in the local administration, the more strictly and closely they should be included in the general system of state administration and, nevertheless, it is possible bifurcation of power - bifurcation and antagonism between self-governing state-public institutions and bureaucratic ones” [4, p. 8].

He pointed out significant shortcomings in the zemstvo movement and believed that they stemmed from the fact that it was in parallel action with the state administration and did not have real power”[4, p. 544].

A. Gradovsky and N. Lazarevsky believed that self-government is, first of all, the redistribution of management functions from central to local. They were deeply

aware of the dualistic nature of the local self-government system, paying attention to the political the meaning of “self-government”, its publicity that was typical for entire state. The researcher A. Gradovsky noted that self-government would lose all meaning if it was locked only in the interests of the area. In his opinion, there are interconnected systems of self-government: municipal, district and provincial, and all of them should be arranged in a single way, and only this will provide an opportunity for concerted action. Elected institutions should act as government bodies, using the powers given from him [5, p. 30]. However, he considered it especially important that local authorities should have the authority to carry out an act of power, exercise this power on the basis of laws and be responsible for its implementation [5, p. 27].

N. Lazarevsky categorically defines self-government as a system of decentralized government, where the reality of decentralization is ensured by a number of legal guarantees that, while protecting the independence of local government bodies, at the same time create their close connection with the area and its settlement [6, p. 5].

N. Lazarevsky and B. Chicherin, striving to deepen the state theory, created a “legal” direction, the essence of which was the establishment of legal relations between the state and self-government that was, self-government bodies should act as legal entities in relation to the state. Recognizing the public nature of self-government B. Chicherin argued that self-government becomes the most beneficial partner of the state, when acquired the rights of a legal entity relieving it of local tasks. The weakness of this interpretation lied in the irreparable contradiction “self-government bodies – legal entities”, while remaining in the system of public administration.

For some time, the political theory was popular, which was based on the absolutization of such features of self-government as the election of their bodies and the publicity of their activities [7, p. 86–87].

Undoubtedly the leader of the Russian municipal scientist school was G. Barabashev. Using the comparative legal method, he deeply analyzed the basic postulates of local self-government, considering it the most important element of the state [8].

It should be noted that the idealization of self-government took place under the influence of the development of objective social processes, when the role and significance of the state in the era of democratic transformations were being revised. The omnipotence of absolutism had to be opposed by the freedom of local communities, which were characteristic of this period in Europe. Therefore, in the points of view of scientists, there was a general idea about the internal freedom of self-government (satisfied the needs of the local population, brought it closer to power, gave political space, etc.).

Another reason for the focus on self-government problem was insufficient development of management science. Its theoretical foundations began to form in the 19th century, when the shortcomings of the market economy were fully manifested and the search for mechanisms of state influence on its improvement began. Among the pioneers of management science were G. Ford, F. Taylor, A. Fail, G. Emerson

and others. However, the founders of management thought more about increasing production efficiency, rather than improving public relations and their harmonization at the local level.

At the same time, many scholars who studied production management and municipal reforms of the 19th century focused their attention on the dualistic nature of local government, as for example it was the Russian scientist L. Velikhov who faced this problem in the 20s of the last century.

The development of ideas in this direction was continued by H. Alderfer. He believed that local self-government should not be opposed, but considered in the system of unified state administration, which in practice could include both state administration and self-government principles.

The social experience of mankind testifies that not in all periods of state development the solution of everyday issues on the ground took the form of self-organization. It means that local self-government as one of the forms of population self-organization did not always exist. If we talk about the modern principles and forms of self-organization of local self-government, it should be noted that they were formed as a result of a long centuries-old dialectical confrontation between society and the state, were the result of political alienation. The modern principles and forms of local self-government were the result of a complex process of a compromise finding, harmonizing the interests of society in the form of territorial communities and the state. Probably, based on this item, modern local self-government should be considered as a mechanism of interaction between territorial communities and the state, the main task of which is to coordinate the relevant interests.

Corresponding member of the Russian Academy of Sciences G. Maltsev rightly emphasizes that the state arose and constituted as a representation of public interests, as a force that is standing above society, but from the very beginning it acted as a system of organized political domination of some people over others, or, in the terminology of Marxism-Leninism, as a system of class domination. However it was, but the early, as well as the later forms of the state, being public institutions, expressed real public interests rarely [9, p. 145].

The problem of local self-government, its place and role in the political organization of society is one of the most complex issues that have been occupying the minds of legists and political scientists for over a hundred years. The debatability of this problem most clearly confirms T. Hobbes who said at one time: "I have no doubt that if the truth that the three angles of a triangle are equal to two corners of a square contradicted someone's right to power or someone's interests, then the teaching of geometry would be contested and supplanted by the burning of all books on geometry [10, p. 7]. It suggests that political and legal science as its criterion has not objective truth, but political expediency.

The self-organization of society at the earliest stages of its development was realized in the form of local self-government on the basis of principles that were closed to its modern models, that is local self-government was one of the first forms of society self-organization long before the formation of the state. This is clearly

evidenced by research on the organization of local government, its history. Primitive forms of self-government were formed as a result of the allocation of socially useful affairs, which were more profitable and more effective to solve not by all members of the community: tribe, clan, community, but to entrust their decision to individual members of the community. As a result of the social life complication, states began to form. It can be considered that states grew out of self-governing communities through their unification and transformation. In other words, the primitive form of self-organization, based on the social nature of social and economic processes regulation, already at an early stage carried signs of a modern state structure. An obvious conclusion follows from this: the evolution of primitive forms of territorial self-government as a result of the social relations complication should objectively lead to the formation of states in which power institutions are balanced by public ones.

In different epochs, democratic theories of the state to the people subordination were and are widespread. These theories substantiate various forms of self-government, the direct and representative form of democracy, the election and liability of officials. The main requirement of these theories is the subordination of the state to society.

Together with democratic theories, and sometimes in combination with them, the ideas of the subordination of the state to law were developed. The essence of these ideas was that people should not be governed by the state, but by an equal for all law. Political alienation in these theories was only partially overcome, because the state remained an external force for society, although subordinated to the law. Liberal theories that posed the problem of a person and developed a system of guarantees for the protection of these rights arose in the process the ideas of the subordination of the state to law developing. The idea of a social order based on law was originated in the ancient world, but during the period of bourgeois revolutions, human rights problems received a new content and widespread.

Thus, with the occurrence of a state organized society, self-government loses its former initial independence and becomes either an appendage of the state structure, a continuation of state power at the local level, or an institution of civil society isolated from the state, remaining relatively independent from state institutions, but in any case acting in within the framework of state and legal regulations.

Throughout the history of statehood, there has been a close organic relationship between the development of the state and self-government. In different types of state at different stages of evolution, there are different models of local government, which, ultimately, always follow the state development, obeying the prescriptions that the state sets, whether in the form of legal norms or in the form of directives, and thus practically always are dependent on the type of state, its structure, form of government and political regime.

This relationship of state and self-government principles is due to deeper and more objective factors, including the degree of socio-economic maturity of society, the ratio and arrangement of social groups – class, estate, ethnic, etc., the nature of

their struggle or cooperation, spiritual, national, cultural traditions, peculiarities of geopolitical position, historical development, demographic state of society and others.

Local self-government has an important role in the implementation of the leading interpretation of modern society and the state that is the unification of the state interests, society and the individual into a single whole, since the main meaning, the essence of local self-government is to harmonize human rights and freedoms and a citizen with the interests of the state and society at the level of each individual. Carrying out the functions assigned to it by the state, local self-government singles out by the subject of its activity each individual person. It must adapt public policy to the interests of each individual and society as a whole.

Exactly this orientation of local self-government meets the ideas of a modern democratic legal social state, the highest value of which is an individual, his rights and freedoms. Therefore, one of the most important tasks in the development of statehood at the present stage is the reform of local self-government. In modern conditions, the state is not considered as a permanently centralized power [11, p. 35]. The modern democratic structure determines the self-organization and self-development of each territorial entity, as well as the state as a whole.

Thus, the state is a complex social economic system that includes social economic formations, within which there are smaller organizational formations /regions, cities, etc. /. The state is the integration of the interests, norms and needs of citizens and social groups conditioned by their residence in a certain territory. At present, the organization of self-government has become one of the most important political tasks. Self-government in political science is considered as a type of management in which the object and the subject of government coincide. According to political scientists, self-government is based on the principles of freedom, equality and direct participation in government. Self-government is traditionally viewed as an alternative one to public administration.

Local self-government is the most important element of public authority organization. Its specificity lies in its dual political nature, such as:

- on one side, self-government bodies are integrated into a single state mechanism of country governing. Local self-government has an apparatus operating on the basis of laws and other normative acts, endowed with the right to use the means of legislatively institutionalized violence; it can independently form a budget, establish and collect taxes;
- on the other side, local self-government is an important element of civil society, a form of political self-organization of local communities. Therefore, it is characterized by: relative independence of both state authorities and non-state structures; the ability to carry out collective actions to protect and achieve their interests; lack of desire to take over the function of managing policy in general; readiness to act within the framework of the established civil and legal norms.

As for the social sphere, there it should be clear and intensive interaction between state power and local self-government in the name of the interests of the population, each person. The task of local self-government is to ensure social

comfort for every member of society, to bring to life the main slogan of the welfare state – to create a decent standard of living for every member of society. This is the social meaning, the purpose of local self-government in today's conditions, when parliamentary democracy is everywhere debunking itself.

As A. I. Kovler rightly remarks, representative democracy is increasingly becoming an expensive ritual, the state outsources more and more spheres of social security to private companies [11, p. 90]. Under these conditions, the role of local self-government should certainly increase.

Conclusions and suggestions. An analysis of the problems of local self-government and society ratio allows us to conclude that after a long break, the state is trying to return to a civilized system of social government, including state administration and local self-government, which is a relatively independent institution of society and acts as a territorial-administrative structural part in the system of civil society [12, p. 285]. In this capacity, local government acts as a connecting link in the system of centralized and decentralized government. Within its powers, it independently manages local affairs, resolves certain state powers transferred to it, using various forms of self-organization and self-realization.

Local self-government is in close interaction and interrelation with other structural elements of civil society that operate at the local level, often within the same territorial boundaries as local self-government. These are public associations, religious organizations, mass media, enterprises and other economic structures of various subordination and different forms of ownership, institutions of culture, education, health care, sports and many others.

In some cases, with a number of such structures, local self-government authorities act as an equal partner, in others – as a local authority, which is the source of existence of some of them, acting as an institution, in the third, it is a governing body, acting on the basis of subordination, coordination, administrative intervention.

Based on the analysis, it can be concluded that it is necessary to ensure the representation of the most significant public and other structures operating within the municipal formation, in representative bodies of local self-government by delegating representatives from the relevant structures to them.

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Теоретические аспекты отношений государства и органов местного самоуправления

В статье исследуются теоретические и практические аспекты основных параметров государственных и самоуправленческих структур, их взаимодействия в процессе формирования и развития государства, отделения от общества.

Дается общая характеристика государства, местного самоуправления, социальной сферы. Уделяется внимание вопросам взаимоотношений местного самоуправления и институтов государства, общества, институтов прав и свобод человека и гражданина. Рассматриваются объективные факторы взаимосвязи государства и принципов самоуправления, включая степень социально-экономической зрелости общества, соотношение и устройства социальных групп. Предпринята попытка определить роль личности в осуществлении гармонизации прав и свобод человека и гражданина с интересами государства и общества.

Установлено, что эволюция примитивных форм территориального самоуправления в результате осложнения социальных отношений должна объективно привести к образованию государств, в которых собственные институты власти сбалансированы государственными. Наряду с демократическими теориями, а иногда и в сочетании с ними, разрабатывались идеи подчинения государства закону; суть этой идеи заключалась в том, что людьми должна управлять не государство, а равный для всех закон.

Ключевые слова: общество; гражданское общество; государство; местное самоуправление; идентичность; социальная сфера; демократия; выборы; ответственность.

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